

## § 981.85

the Board for its marketing promotion expenses of the succeeding crop year, and any unexpended portion of those amounts at the end of that crop year shall be retained in the marketing promotion portion of the operating reserve fund. Any funds in each portion of the operating reserve fund in excess of the level authorized pursuant to paragraph (c) of this section shall be refunded to handlers or used to reduce the assessment rate of the subsequent crop year, as the Board may determine. Each handler's share of a refund shall be the amount by which his payment of assessments exceeds his pro rata share of the two major classifications of Board expenses. For the purpose of computing any refund from the marketing promotion portion, each handler's payment of assessments shall include any amount credited to the handler pursuant to § 981.41. In lieu of a refund, each handler may have the amount due him credited to his assessment obligation of the crop year in which the amount would be refunded.

(c) *Reserves.* The Board may maintain an operating reserve fund consisting of an administrative-research portion and a marketing promotion portion. The amount in each portion shall not exceed approximately six-months' budget for the activity area or such lower amount as the Board may establish with the approval of the Secretary: *Provided*, That this limitation shall not restrict the temporary retention of excess funds for the purpose of stabilizing or reducing the assessment rate of a crop year. To the extent that funds from current crop year assessments are inadequate, funds in the operating reserve may be used for the authorized activities of the crop year. Funds so used, and not exceeding the six-month limitation, shall be replaced to the extent practicable from assessments subsequently collected for the crop year.

(d) *Disposition of funds upon termination.* Any money collected from assessments hereunder and remaining unexpended in possession of the Board upon the termination of this part shall be distributed in such manner as the Secretary may direct.

(e) Any assessment not paid by a handler within a period of time prescribed by the Board may be subject to

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an interest or late payment charge or both. The period of time, rate of interest and late payment charge shall be as recommended by the Board and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

[35 FR 11372, July 16, 1970, as amended at 37 FR 3984, Feb. 25, 1972; 41 FR 26854, June 30, 1976; 61 FR 32921, June 26, 1996]

### MISCELLANEOUS PROVISIONS

#### § 981.85 Personal liability.

No member or alternate member of the Board, or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, agent, or employee, except for acts of dishonesty.

#### § 981.86 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

#### § 981.87 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

#### § 981.88 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon its termination except with respect to acts done under and during its existence.

#### § 981.89 Agents.

The Secretary may, by a designation in writing, name any person, including

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any officer or employee of the United States Government, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

### § 981.90 Effective time, suspension, or termination.

(a) *Effective time.* The provisions of this subpart, as well as any amendments to this subpart, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways hereinafter specified in this section.

(b) *Suspension or termination—(1) Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(2) The Secretary shall conduct a referendum as soon as practical after the end of the fiscal year ending two years after implementation of this amendment, and at such time every fifth year thereafter, to ascertain whether continuation of the order is favored by growers who have been engaged in the production of almonds for market within the State of California during the current crop year.

(3) *When favored by growers.* The Secretary shall terminate the provisions of this subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the growers of almonds who during the crop year have been engaged in the production for market of almonds in the State of California: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such almonds produced for market within said State; but such termination shall be effected only if announced on or before July 1 of the then current crop year.

(4) *If enabling legislation is terminated.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination—(1) Designation of trustees.* Upon the termination of the provisions of this subpart, the members of the Board then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Board, of all funds and property then in the possession or under the control of the Board, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(2) *Duties of trustees.* Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the joint trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the joint trustees pursuant thereto.

(3) *Obligations of persons other than board members and trustees.* Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said Board and upon the said joint trustees.

[35 FR 11372, July 16, 1970, as amended at 61 FR 32921, June 26, 1996]

### § 981.91 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.